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# Del. Supreme Court Clarifies, Applies Choice of Law to Multistate Disputes

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In a recent decision, *Certain Underwriters at Lloyds, London v. Uniroyal*, C.A. No. N14C-12-210 (Del. March 23), the Delaware Supreme Court considered the "fundamental question" of whether "Delaware courts are required to treat insurance contracts that are part of a broad insurance program as legal documents with meaning that varies substantially based on where each claim happens to arise," or, alternatively, "whether these contracts should be given a more consistent, predictable meaning in accordance with the expectations of the parties to them at the time they made their bargain." In an opinion carefully analyzing and applying the Restatement (Second) of Choice of Law's "most significant relationship framework," Chief Justice Leo E. Strine wrote for a unanimous court that the latter approach should prevail.

In the early 1950s, Uniroyal (later acquired by Chemtura), a chemical company, purchased a variety of insurance policies from Lloyd's Underwriters and Home Insurance Co. to address potential environmental liabilities. These policies "were part of a comprehensive insurance program that covered the chemical company's operations around the world." However, at the time of execution, there were several connections between the policies and New York in particular, including the "place of contracting, place of negotiation, place of performance, and Uniroyal's principle place of business."

Some decades later, Uniroyal was "found partially responsible for environmental contamination at a number of sites across the United States." Thereafter, Chemtura, as Uniroyal's successor, sought compensation from Lloyd's for the cleanup of those sites. Although Lloyd's and Chemtura were able to resolve many of the claims, disputes relating to coverage for Uniroyal's operations in Arkansas and Ohio persisted. Ultimately, Chemtura sought a declaratory judgment in Delaware Superior Court that Lloyd's was obligated to reimburse Uniroyal for the costs associated with the Arkansas and Ohio sites. In that suit, Chemtura sought the application of "Arkansas law to claims related to the Arkansas site and Ohio law to claims from the Ohio site." Each of those states applied the "all sums" approach to insurance allocation, pursuant to which each insurer is "liable for the entire risk, within policy limits." In contrast, Lloyd's sought to apply New York's "pro-rata approach," whereby "each insurer is liable only for its proportionate share of the risk." On April 27, 2016, the Superior Court ruled that the "law of the state in which each cleanup site was located should control claims related to that site." Key to the Superior Court's analysis were Arkansas'

and Ohio's perceived interests in the dispute—that "lawsuits have been filed and may continue to arise out of the sites' usage and cleanup"—while New York did not have any "current contacts."

On March 23, the Supreme Court unanimously reversed. Initially, the Supreme Court outlined Delaware's choice-of-law analysis, which follows the Second Restatement: "Determining if the parties made an effective choice of law through their contract; if not, determining if there is an actual conflict between the laws of the different states each party urges should apply; and if so, analyzing which state has the most significant relationship." Neither of the first two components was at issue because "the insurance policies did not specify a particular state law," and a conflict indisputably existed between the "all sums" and "pro rata" approaches. In considering the third prong, the Superior Court had determined that the "significant relationship" test turned on "the Second Restatement's section on insurance contracts, Section 193, which articulates a presumption that the principal location of the insured risk has the most significant relationship to an insurance contract." The Supreme Court disagreed on two grounds. First, Section 193 requires that the "state with the most significant relationship is the state which the parties understood was to be the principal location of the insured risk" at the time the agreement was entered, not when the dispute arose. On the record before the court, that state was New York. Second, Section 193 was largely inapplicable because it did not apply to "this sort of complex, multistate insurance program." Instead, Section 193 was concerned with more predictable, "relatively brief" insurance coverage, such as for a "particular building."

For these reasons, the court proceeded to analyze the policies under Second Restatement Section 188, which applies to "contract disputes more broadly." Strine explained that the true core of the action was "a contract dispute," and that "the important purpose of fulfilling the justified expectations of the parties in contract disputes is best served by providing terms in the contract with a meaning that does not vary based on the happenstance of the locations of a particular claim." Section 188 "identifies five factors to use in deciding which state has the most significant relationship: the place of contracting, the place of negotiation of the contract, the place of performance, the location of the subject matter of the contract, and the domicile, residence, nationality, place of incorporation and place of business of the parties." Section 188 is "meant to be evaluated ... in light of the Second Restatement's general considerations found in Section 6", which provides that, "for contracts, the protection of the justified expectations of the parties is of considerable importance." Following the principles of Section 188 and Section 6, the court held that "New York law should be applied to resolve" the dispute, because "New York was the principal place of business for Uniroyal at the beginning of the coverage and there were a number of contacts with New York over time after the beginning of the coverage." The court further stated that "applying one law to interpret these contracts" would promote the "policy goals" found in the Second Restatement of "'the protection of justified expectations'" and "'certainty, predictability and uniformity of result.'" Holding otherwise would lead to a "choice-of-law road trip" that "would result in difficult-to-predict results that would be inconsistent for no reason relevant to the expectations of the parties."

In sum, this decision provides substantial guidance regarding the interpretation of contracts that have nationwide effect and could be deemed to cover individual disputes in different fora. In *Certain Underwriters*, the Delaware Supreme Court has expressed a clear preference for certainty and predictability in the application of choice-of-law principles. The intentions of the parties at the time of the contract will also be paramount in deciding which state's laws apply. Accordingly, contracting parties may wish to carefully consider whether their contracts might benefit from an express choice of law provision.

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